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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/485,288	02/07/2000	THOMAS ECKEL	MO-5494/LEA	1739

7590 01/23/2002
BAYER CORPORATION
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EXAMINER
HOKE, VERONICA P

ART UNIT	PAPER NUMBER
1714	11

DATE MAILED: 01/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

FD-11

Advisory Action

Application No.
09/485,288

Applicant(s)
ECKEL ET AL

Examiner
VERONICA HOKE

Art Unit
1714



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Jan 11, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on Jan 11, 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (See NOTE below);
 - (b) ☐ they raise the issue of new matter. (See NOTE below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE:

4. ☐ Applicant's reply has overcome the following rejection(s):

5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).

6. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
SEE ATTACHMENT.

7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):

Claim(s) allowed: NONE

Claim(s) objected to: NONE

Claim(s) rejected: 1-6, 8-10, and 15-17

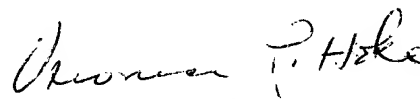
9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.

10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

11. ☐ Other:

The 37 CFR 1.132 declaration serves no probative purpose since the prior art clearly point to the more narrowly circumscribed particle size range for the dienic resin component which **applicants purport to establish criticality for**, namely **0.20 to 0.35 micron**. To wit, Nishihara relates in col.7, lines 47- 58 a preference for butadiene in the grafted styrenic resin component which has a particle size of **0.1 to 5.0 micron** and **exemplifies 1.6 micron**. Since the purpose of this resin component is to improve impact strength (col.7, lines 26-32) , a property that the declaration does not even attempt to evaluate regarding its manifestation as a measure of particle size, the declaration is considered inadequate in establishing unobviousness in the more limited range which is yet within reference's scope.

Kakegawa who also suggests the inclusion of a monophosphate (cols. 7-8) with the subject PC/grafted styrenic resin mixture in which similarly the polyphosphate is the predominant phosphate, actually **exemplifies a composition**, admittedly devoid of the monophosphate, **in which the butadiene component** in the grafted styrene resin is **0.30 micron**. There is no plausible basis given this teaching to expect the mere supplementary inclusion of upto 30 wt. % of the polyphosphate by the monophosphate, in this same PC/grafted styrenic resin blend having 0.30 micron size characteristic of its diene rubber content, to exhibit flameproofing properties that are substantially different in nature. Moreover as related supra, the diene rubber's presence is provided primarily for impact resistance purposes. Applicants have not established that the particle size range asserted here as being unexpected for other property -affected advantages, does not compromise obtaining optimum impact strength.


VERONICA P. HOKE
PRIMARY EXAMINER

vph
January 18, 2002
703 308-2444